

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TEXAS**  
**BEAUMONT DIVISION**

<b>UNITED STATES OF AMERICA</b>	§	
	§	
<b>VS.</b>	§	<b>CRIMINAL NO. 1:17-CR-153-4</b>
	§	<b>JUDGE THAD HEARTFIELD</b>
<b>RICARDO AVILEZ</b>	§	

**MOTION TO VACATE ORDER OF  
ACCEPTANCE OF DEFENDANT’S GUILTY PLEA**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Now comes **RICARDO AVILEZ**, Defendant, by the through his attorney of record, Russell J. Wright, and files this Motion to Vacate Order of Acceptance of Defendant’s Guilty Plea, and in support thereof would show the following:

**I.**

On May 10, 2018, pursuant to a written Plea Agreement, the Defendant appeared before U.S. Magistrate Judge Zack Hawthorn and entered a plea of guilty as to Count 2 of the Indictment returned by a Federal Grand Jury on December 6, 2017.

**II.**

On June 6, 2018, U.S. District Judge Thad Heartfield’s order adopting the magistrate judge’s report and recommendations was filed after the Court found the defendant guilty, and acceptance of the Rule 11(c)(1)(C) binding Plea Agreement was deferred pending review of the Presentence Report.

**III.**

On August 10, 2018, Co-Defendant Worrell filed a Motion to Suppress Wiretap Evidence in this case (Dkt. 172). The Court’s granting of this motion may result in a favorable resolution in Defendant’s case.

**IV.**

On December 13, 2018, Defendant filed a separate motion to adopt Co-Defendant Worrell's Motion to Suppress Wiretap Evidence in this case.

**V.**

The Court has not made a ruling on Co-Defendant's Worrell's Motion to Suppress Wiretap Evidence in this case. Mr. Aviles has an interest in the outcome of the court's ruling on the Motion to Suppress and therefore files his motion to vacate the Court's Acceptance of his Guilty Plea and his separate Motion to Adopt Co-Defendant Worrell's Motion to Suppress Wiretap Evidence.

Therefore, Mr. Avilez respectfully requests this honorable Court enter an order vacating acceptance of his guilty plea until a ruling has been made on Co-Defendant's Motion to Suppress.

This motion is not sought for purpose of delay or to impede justice but is made in good faith.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the court vacate the Court's order accepting Defendant's guilty plea.

Respectfully submitted,

/s/ RUSSELL J. WRIGHT  
RUSSELL J. WRIGHT  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been delivered by electronic filing to Christopher Thomas Rapp, Assistant United States Attorney and all other attorneys who receive electronic filings for this case on this 13<sup>th</sup> day of December, 2018.

/s/ RUSSELL J. WRIGHT  
RUSSELL J. WRIGHT

**CERTIFICATE OF CONFERENCE**

Counsel for the Defendant has communicated with Christopher Thomas Rapp, Assistant United States Attorney, and he advised me that he will reserve his opinion as to the relief requested until after he has read the motion.

/s/ RUSSELL J. WRIGHT  
RUSSELL J. WRIGHT